

Appl. No. : 10/824,766
Filed : April 13, 2004

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the following remarks.

A Terminal Disclaimer is Enclosed

Applicant notes that the Examiner has rejected Claims 26-65 on the grounds of obviousness double patenting as being unpatentable over Applicant's earlier-issued U.S. Patent No. 6,718,965. While Applicant does not necessarily agree with the basis for the rejection, Applicant submits that the rejection is overcome by the enclosed terminal disclaimer and requests withdrawal of the rejection.

Claims 26-65 Are Not Anticipated or Unpatentable

Claims 26-32 have been rejected as anticipated by or, in the alternative, unpatentable over Gilliom (US Pat. No. 4,108,139). Applicant respectfully disagrees with the Examiner's characterization of Gilliam. Applicant also respectfully disagrees that the Examiner's rejection complies with the law regarding both anticipation and obviousness.

As an initial matter, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Examiner has stated that Gilliom "appears to disclose substantially all of the claimed limitations" (emphasis added). The Examiner, however, has not distinguished between the claims rejected as anticipated and the claims rejected as unpatentable. Accordingly, Applicant will treat all of the claims as if they were rejected as unpatentable because if a claim is patentable then the claim also must not be anticipated.

To establish a *prima facie* case of obviousness, three basic criteria must be met: first, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; second, there must be a reasonable expectation of success; and finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See M.P.E.P. §2143*. In addition, the obviousness of the recited constructions must be evaluated in terms of the whole invention and must be determined on the totality of the record,

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by a preponderance of evidence with due consideration to the persuasiveness of all arguments. *See In re Chu*, 36 USPQ.2d 1089 (Fed. Cir. 1995).

The Examiner, in rejecting the claims, stated that “[w]here differences occur between the newly claimed invention and the invention disclosed by Gilliom, such differences appear to be a matter of design choice based upon spatial considerations. In the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the invention disclosed by Gilliom, so as to provide for spatial considerations.”

Gilliom disclosed a convention oven that was incapable of being operated in a bake mode due to the insulation present between the heat source and the oven cavity. As explained previously, Gilliom specifically states that the invention relates to “convention ovens.” Nowhere does Gilliom mention a “bake mode.” The burner box of Gilliom clearly is insulated from the oven cavity. Col. 3, lines 57-60 state “the heat source is a gas burner 27 contained within a burner box 28 that is located beneath the oven cavity at one side of the same, the left as viewed from the front, with some of the thermal insulation between the two.” Thus, there is a complete inability to operate in a “bake mode.” Moreover, the off-center location of the heat source also impairs the ability of the disclosed oven to be operated in “bake mode” because the off-center location will cause nonuniform cooking results even if the heat were able to be transferred into the oven cavity from that location. Thus, the combustion box of Gilliom is insulated and isolated from the oven cavity of Gilliom and the oven of Gilliom is not able to be operated in a bake mode as well as a convention mode.

To the contrary, Claim 26 recites, among other limitations, at least a portion of a wall separating a combustion box from an oven cavity not being insulated. As discussed above, given the construction of Gilliom, at least this limitation is not disclosed or suggested by Gilliom. There is no teaching or suggestion to modify Gilliom. Moreover, not insulating at least a portion of a wall separating a combustion box from an over cavity is not “a matter of design choice.” Thus, for at least these reasons, Claim 26 is patentable over Gilliom.

Claims 27-32 depend from Claim 26 and are not rendered unpatentable by Gilliom for at least the same reasons that Claim 26 is not rendered unpatentable by Gilliom. Moreover, at least some of these claims recite further patentable distinctions. For instance, Claim 28 recites

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openings formed in a bottom wall of the oven separating the oven cavity from the combustion box. Contrary to the Examiner's assertions, Figure 1 does not show any such openings and Figure 2 clearly shows that there are no openings formed in the bottom wall of the oven separating the oven cavity from the combustion box. Thus, Claim 28 is not rendered unpatentable by Gilliom. Moreover, Claim 30 recites, among other limitations, that the combustion box comprises a plurality of air inlet holes. Air is supplied to Gilliom's burner box through a clearance 33 that is provided between the front range bottom panel 31 and the body of the range. Thus, Gilliom did not disclose multiple air inlet holes. For at least these reasons, Claims 27-32 are not rendered unpatentable by Gilliom. Reconsideration and allowance of Claims 27-32 are respectfully requested.

In rejecting Claims 33-65, the Examiner simply stated that any differences between these claims and Gilliom appear to be a matter of design choice. Applicant respectfully disagrees and submits that the Examiner has failed to show any teaching or suggestion in the prior art that would render these claims unpatentable.

As an initial matter, Claim 33 recites a multiple mode oven. Gilliom does not operate in any other mode than convection, as discussed above. Moreover, there is no teaching or suggestion of modifying Gilliom to form a multiple mode oven and any such modifications would result in removing insulation that is disclosed to have a specific purpose in the operation of the oven of Gilliom. In addition, Claim 33 recites, among other limitations, openings formed in the oven bottom wall such that the oven cavity and the combustion box are in direct fluid communication. As discussed above, Gilliom did not teach such a direct fluid communication through openings formed in the oven bottom wall. Moreover, there is no teaching or suggestion in the prior art that would lead one to modify Gilliom in such a manner given Gilliom's explicit teachings regarding the insulated nature of the combustion box.

Claims 34-65 depend from Claim 33 and are patentable over Gilliom for at least the same reasons that Claim 33 is patentable over Gilliom. In addition, many of these claims recite further patentable distinctions. For instance, Claim 34 recites, among other limitations, that the fan inlet is positioned centrally in the baffle plate that defines the fan inlet, which results in more uniform distribution of the heated air in the oven. To the contrary, Gilliom taught, a Col. 4, lines 34-57, that its fan, and therefore its inlet, were offset to one side within the "specially formed housing"

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taught by Gilliom. There is no teaching or suggestion in Gilliom for the centered construction recited by Claim 34. In addition, Claim 40 recites that the combustion box comprises a bottom wall that has a portion that slopes upward in a rearward direction. Such a construction also was not taught or suggested by Gilliom, which taught a square corner, as shown in Figure 2. Furthermore, Claim 43 recites a plurality of secondary combustion holes. Such holes provide additional air that mixes with the hot air in the combustion box. Such a construction was not disclosed, taught or suggested by Gilliom. Moreover, Claim 47 recites that the combustion box is positioned substantially centrally under the oven bottom wall. Again, such a construction was not taught or suggested by Gilliom. Applicant submits that several other claims also recite features that are not disclosed, taught or suggested by Gilliom (e.g., Claims 48-51, 53-55 and 58-62

Applicant respectfully requests reconsideration and allowance of Claims 33-65.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

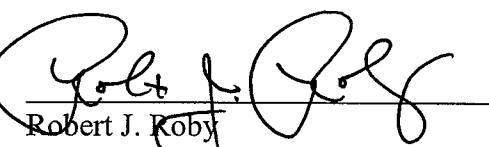
The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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